

THE MARRIAGE LAWS.

enactments could well have been devised than the restrictions which it imposes. The provisions of the Roman law as to parental authority are exaggerated, and while the criminal condemned to the '*travaux forcés*' is deprived of all other civil rights, he retains an absolute veto over the marriage of his children to an age beyond that of legal majority for other purposes, and is entitled to '*actes respectueux*' from them at every age, the absence of which would expose the marriage to be nullified, and which in any event create unjustifiable delay.

The rule early introduced into Germany, which prohibited marriages of members of sovereign houses even with the higher nobility, extended, till modified by the improved legislation of the new confederacy, to all inter-marriages between different classes of the community. The laws of many of the German States, more just than the French Code, seem to have contemplated the natural result of a system which imposed innumerable artificial impediments to marriage, and in the Codes of Prussia and Saxony the '*Verlobnisse*' forms a separate chapter. Though such connections were terminable without legal proceedings, provision is made for the legitimacy of the children born under them, and in Prussia there is a complete code respecting what the '*Allgemeines Landrecht*' terms marriages of the left hand.

In England legislation against *mésalliances* only goes back about a century. It dates from Lord Hardwicke's Act, as it was called, passed in 1753. For a long time previous, almost every year, Bills to prevent clandestine marriages, that is to say, to protect the aristocracy against the improvident marriages of their prodigal heirs, passed the House of Lords but failed in the Commons. Lord Hardwicke's Act not only prohibited any suit before an Ecclesiastical Court to compel the celebration *in facie ecclesiæ* of a marriage contracted either *per verba de presenti* or *per verba de futuro*, but the rule as to the consent of parents, which the Canon Law had never required, was rigorously applied. Moreover an omission of the minutest forms was fatal. Unlike the French judges, who are vested with discretionary power in the case of omission of the preliminary requirements of the Code to look at the motives, whether the object was clandestinity, or the omission of the formalities was accidental, the reports of the English Courts will show cases where marriages, which had lasted twenty-five years, and in one case nearly forty, were annulled after the birth of children for omissions in the formalities prescribed for obtaining a license, though the license itself was perfectly regular and no suggestion of clandestinity existed. In several cases the judges expressed their regret in being compelled to adjudicate according to the letter of the law, nor was it till 1822 that Lord Hardwicke's Act received any modification. Many of the

most stringent provisions of that law no longer exist, but under the Acts of 4 Geo. IV. c. 76 (1823), & 6 and 7 Will. IV. c. 85 (1836), which constitute the present marriage laws of England, though a marriage is not invalid because a license is issued under a wrong name, any mistake of name, however slight, renders void a marriage celebrated after the publication of banns.

It is said, in the report of the Royal Commission made last year, that in all these forms of English marriages, the marriage may be invalidated by a non-compliance with any requirements of the law. For instance, if the place where the marriage is celebrated is not properly consecrated or set apart, or if the marriage is effected in some other locality than where the banns have been called, or if any other error affecting time or place is made by the parties, that entirely invalidates the marriage, although, upon other grounds, there may be no objections whatever to it.

I will not dilate further on what may be deemed only matter introductory to the subject to the present discussion. Accustomed to the jurisprudence of a country where no formal ceremony, civil or religious, is requisite to constitute a valid marriage, and every intendment is made in favor of legitimacy, it is difficult for me to comprehend a system of legislation which, for the mere object, moreover usually ineffectual, of preventing improvident marriages of spendthrift heirs, would sacrifice female virtue to family pride. It was, indeed, with no little astonishment that I read the following remarks, made in a debate in the House of Commons during the last session of Parliament:—'Suppose,' it was said, 'any gentleman in this House visited at a house in Scotland where a young lady happened to be staying, and that he and the young lady took a walk together, and, in the course of the walk, he took a piece of paper out of his pocket, on which they wrote down a mutual promise to marry, though the piece of paper might be simply put back again into his pocket, and though nobody might be there at the time, and if the persons afterwards lived in a certain way together, that would be a valid marriage, although nobody might know of the fact of the marriage for years afterwards.' It seems to me that, so far from this statement aiding the cause for which it was intended, it conclusively establishes the propriety of the Scotch law of marriage. I am very sure that there is no tribunal in my country that would not, under the facts as stated, pronounce the sentence of a valid marriage; nor is there a legislature in any state of America which would enact such a system of marriage laws as would enable the parties, if they desired it, to escape from the relation thus contracted, whether or not it was evidenced either by a priest or civil officer.

Having alluded to the English law of marriage, I ought not to leave this branch of my subject without referring to the recommenda-